



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XA720

Fisheries of the Northeastern United States; Northeast Multispecies Fishery;

Receipt of Petition for Rulemaking for Atlantic Cod

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces the receipt of a petition for rulemaking from the Conservation Law Foundation. This petition requests NMFS prepare a Secretarial Amendment and take specific emergency action to end overfishing and rebuild Atlantic cod.

DATES: Comments must be received on or before *[insert date 45 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2021-0039, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov> and enter NOAA-NMFS-2021-0039 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Supervisory Fishery Policy Analyst, telephone 978-281-9288, e-mail: *peter.christopher@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Conservation Law Foundation (CLF) has petitioned NMFS to implement emergency regulations and a Secretarial Amendment for the Northeast multispecies fishery, and other relevant fisheries that use gear capable of catching more than a minimal amount of Atlantic cod. CLF’s petition asserts that NMFS has repeatedly approved New England Fishery Management Council actions that have failed to prevent and end overfishing and rebuild Atlantic cod stocks. CLF is petitioning NMFS to implement conservation and management measures it deems necessary to end overfishing and rebuild the Gulf of Maine and Georges Bank cod stocks.

CLF cites numerous reasons for NMFS to take Secretarial action. CLF asserts that NMFS has consistently approved management measures that failed to address low recruitment, neglected to account for model errors and uncertainty when setting catch advice, approved uncertainty buffers that do not account for this uncertainty, and approved the use of an inadequate acceptable biological catch (ABC) control rule. In addition, CLF states that NMFS has failed to conduct adequate rebuilding progress reviews for both the Gulf of Maine and Georges Bank cod stocks as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), or as required by the supplemental rebuilding program review process implemented in Framework Adjustment 51 to the Northeast Multispecies Fishery Management Plan (FMP). This review process requires the Council to review a rebuilding plan if: The total catch limit for a stock has not been exceeded during the rebuilding program; new scientific information indicates that the stock is not rebuilding according to the program

trajectory; and if the fishing mortality associated with rebuilding (Frebuild) drops below 75 percent of the fishing mortality associated with maximum sustainable yield (FMSY)). According to CLF, the Gulf of Maine cod stock has met all three of these criteria, but the Council has not initiated its required rebuilding program review. Further, CLF asserts that NMFS has failed to recognize or account for the findings of a National Research Council (NRC) Rebuilding Committee, which identified several reasons why stocks may not rebuild as expected under their respective rebuilding plans. Finally, CLF states that in NMFS's denial of a 2015 petition for rulemaking on Gulf of Maine cod, NMFS committed to prevent overfishing, rebuild the stock, and adjust management measures as needed in response to the findings of a 2015 assessment. CLF asserts that these commitments were not upheld, and that NMFS did not properly balance biological and socioeconomic impacts in its rationale to deny the 2015 petition.

CLF's petition also alleges that inadequate at-sea monitoring coverage in the sector fishery has failed to provide sufficiently accurate and precise data to prevent and end overfishing or rebuild the cod stocks. CLF asserts that inadequate monitoring coverage targets, coupled with low quotas, have created incentives for the fishing industry to illegally discard and misreport cod catch. Additionally, CLF relies on recent analyses in the development of Amendment 23 to the Northeast Multispecies FMP indicating that there is an observer effect in the Northeast multispecies fishery. This observer effect could mean observed trips are not representative of unobserved trips. CLF also states that, without accurate and precise catch data, managers cannot appropriately apply the accountability measures that are designed to prevent overfishing.

Last, CLF states that measures to protect essential fish habitat, help rebuild cod stock age structure, account for sub-populations, and account for climate change impacts, are critical to cod recovery. CLF asserts that the rebuilding plans that have been implemented for cod do not identify and protect critical cod spawning areas or adequately

conserve habitat for juvenile cod. CLF also states that past management actions have failed to address truncated cod stock age structures, which may contribute to reduced recruitment and decreased resilience to stressors. CLF asserts that managing cod as two stocks (Gulf of Maine and Georges Bank) fails to account for sub-populations, and that recent research by the Atlantic Cod Stock Working Group suggests that at least three sub-populations exist. Differences in the characteristics of these sub-populations, such as differences in spawning seasonality, are important for stock recovery. Finally, CLF states that stock assessments and management measures for Atlantic cod must account for impacts to the stock due to climate change, especially since temperature and other environmental conditions have been shown to impact cod biology.

The CLF petition requests NMFS implement all of the following conservation and management measures.

1. 100-percent at-sea monitoring on all commercial groundfish trips.
2. Measures to prohibit directed commercial and recreational fishing for Atlantic cod that:
 - a. Implement large area closures once a stock's incidental limit is caught;
 - b. Reduce the incidental catch rate annually, consistent with the current ABC control rule until overfishing is ended;
 - c. Prioritize the allocation of incidental catch to groundfish vessels, consistent with the current methodology; and
 - d. Ensure that any incidental catch history during the closure of the directed fishery will not count towards future potential sector contributions.
3. Area closures to protect all identified Atlantic cod spawning locations and favorable habitat for juvenile and adult cod.

4. A requirement to use modified groundfish gear, such as haddock separator trawl or other selective fishing technology, throughout the U.S. range of Atlantic cod to reduce incidental cod catch.
5. Additional measures in the recreational fisheries to reduce the mortality of incidental catch of Atlantic cod.

In a letter dated June 10, 2020, NMFS requested the New England Fishery Management Council consider the petition. Because Council development of fishery management measures is the core of the Magnuson-Stevens Act, NMFS wanted to ensure that the Council considered the petition and had the opportunity to take appropriate action through the Council process if it deemed that such action was necessary. After considering the petition at its June Council meeting, the Council sent a letter to NMFS on November 27, 2020, describing its consideration and conclusions. The Council concluded that the petition does not have merit based on its rejection of CLF's assertions underlying its claim that the Council has failed to take measures necessary to protect cod and declined to consider a majority of CLF's recommended measures. The Council stated that it already approved increasing monitoring requirements in Amendment 23 to the Northeast Multispecies FMP. Also, it is important to note that the Council plans to consider how new cod stock structure information may affect development of conservation and management measures and is advocating for the development of a new data-limited modeling approach for the Eastern George Bank cod. See **ADDRESSES** for the Council's letter and grounds for its decision.

The Magnuson-Stevens Act authorizes regional fishery management councils to develop fishery management measures, and specifically provides the New England Fishery Management Council with the authority to manage the Gulf of Maine and Georges Bank cod stocks. For the reasons described above and in the Council's letter to NMFS, the Council declined to take additional action on Atlantic cod after reviewing the

contents of the petition. However, CLF has provided sufficient information and support in its request for Secretarial action to warrant publication of a notice seeking public comment.

In addition to the petition and information provided by CLF and the Council, NMFS will consider comments received when determining whether to proceed with the development of conservation and management measures suggested by the petition. Upon

determining whether to initiate the rulemaking suggested by the petition, the Assistant Administrator for Fisheries, NOAA, will publish a notice of the agency's decision or action in the **Federal Register**.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2021.

Kelly Denit,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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